

VERNA C. BUCY

IBLA 75-386

Decided July 21, 1975

Appeal from decision of Montana State Office, Bureau of Land Management, dismissing protest to redrawing of cards for oil and gas lease M-30996 (ND).

Reversed.

1. Oil and Gas Leases: Applications: Drawings

Where a drawing was held to determine the priority of simultaneous oil and gas lease applicants and afterwards it was discovered that cards for another parcel had inadvertently been included in the drawing, the results of the drawing will stand, as all applicants in the drawing had an equal chance to win.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Verna C. Bucy appeals from the February 20, 1975, decision of the Montana State Office, Bureau of Land Management (BLM), dismissing appellant's protest to redrawing of cards for oil and gas lease M-30996 (ND).

Appellant's offer was drawn first at the initial drawing. Subsequently, employees of the Montana State Office discovered that offers for a different parcel had inadvertently been included in the first drawing, although none had been drawn. They decided to separate the offers and to hold a second drawing for the first parcel. Upon learning of the redrawing, appellant protested to the Montana State Office. That office dismissed appellant's protest stating that the pertinent regulations, 43 CFR 3112.2-1(a)(3), mandated a redrawing.

Appellant argues that the redrawing was improper because the first drawing was fair, since each applicant had an equal chance of having his card drawn first. Moreover, appellant argues, an applicant should

not be deprived of a preference right unless the regulations are so clear that there is no basis for applicant's noncompliance. We agree with both points.

[1] It is clear that a drawing is considered fair only if each applicant has had an equal chance of winning. For that reason, drawings have been cancelled where a drawing card has been omitted. Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974); Craig Martin, 6 IBLA 37 (1972). For the same reason, leases issued after a drawing have been cancelled where it was learned that the applicants had greater than an equal chance of winning. Richard Donnelly, 11 IBLA 170 (1973). But where those whose cards have been omitted fail to lodge a timely appeal, or if they relinquish their right to a new drawing, the Department has refused to hold a new drawing. Esther Bosworth, A-30903 (April 1, 1968); John L. O'Brien, A-30416 (April 8, 1965). Furthermore, the present regulations were changed from those originally proposed to reduce the need for redrawings. This was done by requiring that three cards be drawn for each parcel instead of one. Compare 38 F.R. 22230 (1973) with 38 F.R. 1281 (1973). Three cards were drawn for the parcel in question.

The action of the Montana State Office was premised on the assumption that the drawing was illegal or, at least, improper. However, we see no violation of the pertinent regulation, 43 CFR 3112.2-1(a)(3), which merely requires that three entry cards be drawn for each leasing unit, as was done in this case in the first instance. Moreover, we find that no mathematical disparity resulted. Cf. Tenneco Oil Company, 17 IBLA 285 (1974). The inclusion of the second set of drawing cards was simply irrelevant to the first drawing, as each applicant had an equal chance to win.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Edward W. Stuebing  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Joan B. Thompson  
Administrative Judge

